

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND INDUSTRY**

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on January 14, 1999 at 9:00 A.M., in Room 410 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. John Hertel, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Dale Berry (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Bea McCarthy (D)  
Sen. Glenn Roush (D)

**Members Excused:** Sen. Fred Thomas (R)

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 126, 1/11/1999  
SB 123, 1/11/1999  
SB 125, 1/11/1999  
Executive Action: None

#### **HEARING ON SB 126**

**Sponsor:** SEN. WILLIAM CRISMORE, SD 41, Libby

**Proponents:** John Dilliard, Department of Environmental Quality

**Opponents:** Rhonda Carpenter, Carp's Drain & Septic Service  
REP. SCOTT ORR, HD 82, LIBBY

**John Ward, Little John's Septic Service**  
**Thom Davis, Capital Septic**  
**Steve Kunkel, Montana Septic**

**Opening Statement by Sponsor:**

**SEN. WILLIAM CRISMORE, SD 41, Libby**, said he was asked to carry the bill for the Department of Environmental Quality (DEQ). **SB 126** deals with septic tanks, cesspools, privy cleaning and disposal of it. During the reorganization of the Department, the licensing and regulation of septic tanks, cesspools and privy cleaning was transferred to the Department; unfortunately, when they started to work with the statute, the law was outdated and didn't conform with Montana's EPA definition requirements of current acceptable practices for sludge disposal. Additionally, the existing fee structure was inadequate and provided the Department with only \$685 per year to license, investigate complaints and provide technical assistance to 137 septic tank pumpers and 168 disposal sites. **SB 126** seeks to correct those problems and allow the Department to perform the necessary duties to properly implement this law.

**Proponents' Testimony:**

**John Dilliard, Department of Environmental Quality (DEQ)**, read his written testimony **EXHIBIT (bus10a01)** and referred to the Fact Sheet **EXHIBIT (bus10a02)**.

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**Opponents' Testimony:**

**Rhonda Carpenter, Carp's Drain Cleaning & Septic Service, Great Falls**, said their clients had a few concerns with this bill; however, they had no quarrel with it being moved to DEQ. The things they did have a problem with include: (1) Section 2. Currently, rule making authority repeals 37-41-103 and addresses licensure but not the operation of the septic tank, cesspool or privy cleaning business. The long list of rules provided here details the requirements for temporary and permanent sites of disposal septage, which is the second rule that exists right now. But it forgets to mention they don't have rule making authority over the day-to-day operations of the bookkeeping of the business. Therefore, they were asking 37-41-103 to be amended back in as a rule in the rule making authority; (2) Late fees -- this is a huge jump, from \$25 to \$125. The \$125 fee is not really a huge out-of-line fee; however, the late fee is often out of their control. Example: This year the renewal papers came about the second week in November. We have to send them to every

dumping site and also to the county sanitarian in each county for signatures. Her company asks everyone to complete the paperwork and return it as soon as possible; however, that doesn't always happen. She noticed that wasn't listed so perhaps DEQ was planning to change the way that was handled. However, they would like the Department to reconsider the \$125 late fee; (3) There are 137 septic tank pump operators and at \$25 a license, \$3,425 should be collected; not \$600+. Amendments were given

**EXHIBIT (bus10a03) .**

**REP. SCOTT ORR, HD 82, Libby**, said he was a septic pumper for 10 years so he has some background in the business. He said the DEQ brought this bill before this Committee during the 1997 Session. The Committee saw fit to table the bill. He said he was disappointed because he hoped that between last session and this one, DEQ would contact the pumpers and work with them to come up with the rule changes and at least let them know what was going on. He didn't know about this bill until yesterday morning and when he found out, he phoned some of the pumpers. He said none of the contacted pumpers were aware of the changes and were a bit apprehensive about some of them. **REP. ORR** said he recognized the need to transfer some of the rule making authority, etc., but **John Dilliard** said it was the legal counsel's opinion they needed to move Title 75 from 37 and that may or may not be true -- the Committee could decide that. He recounted he would like the DEQ to work with the pumpers and get some input about what the changes mean to the business. One thing that has to be understood is some of the pumpers are in it full-time; however, many pumpers are in small communities and to them, it's only a part-time job. Increasing the fee from \$25 to \$125 is substantial. He suggested perhaps the fee should be graduated. Also, unless there is compelling evidence from EPA that it is necessary to come into compliance right now, this bill should be put aside and have DEQ work with the local pumpers and come up with something that is tailored to their needs; otherwise, there will have to be many amendments to the bill.

Another issue to be looked at is the return of 20% to the counties -- currently that is about \$50 per county; with the increase it will be about \$60 per county. That amount doesn't justify the paperwork of transferring the money from DEQ to the counties. There must be a better way to handle that.

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**John Ward, Little John's Septic Service and Portable Toilets, Helena**, thanked **REP. ORR** for notifying him yesterday morning -- he follows the bills quite closely but must have skipped a day. If he hadn't called, he would have missed it. **Mr. Ward's** office

also called other pumpers to notify them but obviously they couldn't get here to testify. He called **Mr. Dilliard** yesterday and emphasized his disappointment at the late notification. He said he had always made himself available to cooperate, a number of his profession partake in a number of seminars across the U.S. in order to upgrade the professionalism. The DEQ made zero effort to incorporate them into the process and they were totally out of the loop. His difficulty was: (1) The shock of a 500% increase; (2) Trying to solve a problem that doesn't exist, explaining they had been subject to EPA for about eight (8) years now. They do like the idea of the state being the licensing authority because so many of the pumpers are cross-jurisdictional. The site form is taken to the site owner and the completed form taken to the county sanitarian who approves or disapproves the site suitability. What does the state do with the forms? They just file them -- that is their site management. DEQ wants to make the rules but will not have the people to enforce them so the extra work will be on the counties; (3) CI-75 -- of the 137 pumpers, probably 100 are part-time; yet who will vote on this fee? Will one hundred percent of the state of Montana vote? He said he was more opposed to being kept out of the loop, than the bill itself.

**Thom Davis, Capital Septic, Clancy**, said he wasn't aware of anything until he was called yesterday. As to the applications being signed by the land owners, he had sent four (4). Because it came from the state, they pitched it so he had to hand carry the forms to them. He operates his business in five (5) counties and it is hard to catch people home to get the forms signed, get the forms back, catch the sanitarian (many of who are part-time), i.e. it's almost impossible to get it done.

**Steve Kunkel, Montana Septic, Great Falls**, repeated previous testimony in that he didn't know about the bill until yesterday morning. He opposed the bill.

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Questions from Committee Members and Responses:

**SEN. MIKE SPRAGUE** asked for clarification whether the average state-wide fee was \$150. **John Dilliard** affirmed. **SEN. SPRAGUE** commented many were below that amount and many were above it and asked for the lowest as well as the highest charge. **Mr. Dilliard** said the highest was \$300 per septic tank. **Mr. Pat Crowley, Acting Waste Manager Supervisor, DEQ**, said they didn't have an exact number but it appeared the range was from \$90 to \$300; however, it also depended on the distance from the disposal sites.

**SEN. SPRAGUE** asked **Thom Davis** what his high and low charge was and was told the average in the Helena area was about \$100, with \$90 being the low and \$125 being the high.

**SEN. SPRAGUE** referred to 37-41-202 and commented DEQ was giving counties 80% of monies collected but now were changing it to 20%. **Mr. Dilliard** affirmed. **SEN. SPRAGUE** asked if there were any more surprises in the repealers that the Committee should know and **Mr. Dilliard** said there weren't.

**SEN. DALE BERRY** asked if the pumpers had an association and **REP. SCOTT ORR** said they didn't.

**SEN. BERRY** commented he was carrying board bills and he found where the boards opposed some legislation and contacted the industry people, the process moved and eliminated much of the discontent. It seemed a big issue was the difficulty in the licensing time and process. He assumed when someone had a dumping site, it had to be approved initially. **Mr. Dilliard** said the dumping site is approved by the county sanitarian, which is what the pumpers were referring to when they said they took the paperwork to the county sanitarian who approves it and signs off.

**SEN. BERRY** asked if once that was approved, they had to include it in the annual licensing process. **John Dilliard** said it had to be included annually. **SEN. BERRY** asked if it would be appropriate, once the site was approved, to waive the process by having the pumper certify he still used the site and it was still in compliance. Also, if that were done, some of the complaint hearing process could be eliminated. This would be done on an annual basis. **Mr. Dilliard** said it could be a possibility; however, they would like to have some sort of regular periodic review of the site by either state or county personnel to ensure it wasn't being overused, problems hadn't developed, etc.

**SEN. BERRY** asked about the longevity of a site and **Mr. Crowley** said they were long-lived, provided they weren't over-used. Material had to be applied to the site in such a manner so the plants could uptake the septage applied and not let the nitrates go into the ground water. Neighbors limit the functionality of the sites because they can get too close to the housing.

**SEN. BERRY** suggested in that case, DEQ could say to the pumpers they could use it only so much and if at any time, the Department did an inspection they would make them accountable with the certification. If there were a problem with the neighbors, DEQ would get a complaint, i.e. a regulation by the people who live

there. **Pat Crowley** said when the rules were rewritten, this would be addressed.

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**SEN. JOHN HERTEL** asked who monitored the dumping station. **Mr. Crowley** said at the current time it was unregulated, or unmonitored; basically, it was a citizen's complaint form of monitoring. He said county sanitarians and DEQ both have authority to monitor, but their budgets don't allow it.

**SEN. HERTEL** asked for **John Ward's** comment, which was what **Mr. Crowley** said was true; however, he differed thus: (1) County sanitarians and state also have the authority to randomly inspect and he didn't accept the low budget excuse because they are responsible for the general health in their General Budget; (2) Random monitoring is done within both time and budget constraints, but EPA is very specific on the applications and rate of application to provide the uptakes, etc. The determining factor for site suitability will often be the esthetics, i.e. if people move in and are offended by the site, the pumpers will move out even though technically the pumpers may be correct.

**SEN. VICKI COCCHIARELLA** asked if the sponsor would consider holding off action on **SB 126** so there could be a "meeting of the minds" of people who were interested. **SEN. BERRY** had an idea, she had questions, etc. **SEN. CRISMORE** said it was obvious **SB 126** had big problems but there was a real need where it is controlled and updated to where it works. He said he would be very receptive to the idea and would ask DEQ to work with them to see if there was any hope to make this a bill in which there is consent and everyone is happy with it. He will be more than happy to ask.

**SEN. COCCHIARELLA** commented **SEN. CRISMORE** had experience with that sort of process and knows what it means to be involved in these decisions and DEQ should have learned that lesson also -- these things are much more successful when the affected people are brought into the loop. She hoped the roadblocks hadn't been set up already to prohibit working together.

**SEN. CRISMORE** commented he didn't think there was anybody who didn't want this regulated, at least to the point that it was done right. He felt that was the intent of both himself and the Department.

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**SEN. HERTEL** suggested there were regulations the Committee on Business and Industry really wasn't fit to act on and wondered if Natural Resources Committee would be better. He wondered if **SB 123** and **SB 125** should still be acted on.

**Bart Campbell** said both bills were the CI-75 bills for the fee increase and the late fee. If **SB 126** went out the way it was, the other two (2) would have to be passed also. Technically, perhaps the hearing on them is necessary and then hold all three(3).

**SEN. HERTEL** suggested it might be wise to hold all three (3) and act on them together. **SEN. BEA MCCARTHY** commented it was proper for a public hearing to be held but it didn't look like any type of notice for a public hearing was done by DEQ. She said she would be very uncomfortable passing anything that hadn't had statewide notice.

**SEN. HERTEL** said the sponsor should close and they would presume the two (2) groups would get together. Then they would be happy to work on the bill. If they would like to leave the bill with Business & Industry, that was fine; or if they wished to move it to Natural Resources, that was fine also. It would be their decision.

**Closing By Sponsor:**

**SEN. CRISMORE** agreed the bill needed work and he would like to talk with the Department and with **SEN. HERTEL** to determine what to do.

**ADJOURNMENT**

Adjournment: 9:45 A.M.

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SEN. JOHN HERTEL, Chairman

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MARY GAY WELLS, Secretary

JH/MGW

**EXHIBIT (bus10aad)**